

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Christopher Connors	Team: Squad #9	CCRB Case #: 201700963	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Thursday, 02/02/2017 9:43 PM	Location of Incident: inside of § 87(2)(b)	Precinct: 25	18 Mo. SOL 8/2/2018	EO SOL 8/2/2018	
Date/Time CV Reported Mon, 02/06/2017 6:16 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Mon, 02/06/2017 6:16 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Sajit Tomy	7575	955585	HBM RT
2. POM Thomas Tunstall	19788	955603	HBM RT
3. POM Michael Fasano	27751	954795	HBM RT
4. Officers			PSA5
5. An officer			HBM RT
			PSA5

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Kelly Colon	12300	955834	HBM RT
2. POM John Hewitt	02308	950585	HBM RT
3. POM Sergey Shepotkin	13988	952233	HBM RT
4. SGT Natasha Friday	02561	928322	HBM RT

Officer(s)	Allegation	Investigator Recommendation
A.POM Sajit Tomy	Abuse: Police Officer Sajit Tomy stopped an individual.	
B.POM Thomas Tunstall	Abuse: Police Officer Thomas Tunstall stopped an individual.	
C.POM Sajit Tomy	Abuse: Police Officer Sajit Tomy stopped § 87(2)(b)	
D.POM Thomas Tunstall	Abuse: Police Officer Thomas Tunstall stopped § 87(2)(b)	
E. An officer	Discourtesy: An officer spoke discourteously to § 87(2)(b)	
F.POM Sajit Tomy	Force: Police Officer Sajit Tomy used physical force against § 87(2)(b)	
G.POM Thomas Tunstall	Force: Police Officer Thomas Tunstall used physical force against § 87(2)(b)	
H.POM Michael Fasano	Force: Police Officer Michael Fasano used physical force against § 87(2)(b)	
I. Officers	Force: Officers used physical force against § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
J.POM Michael Fasano	Force: Police Officer Michael Fasano hit § 87(2)(b) against vehicle.	[REDACTED]
K. Officers	Force: Officers hit § 87(2)(b) against vehicle.	[REDACTED]
L. An officer	Discourtesy: An officer spoke discourteously to § 87(2)(b) [REDACTED]	[REDACTED]

Case Summary

On February 6, 2017, this complaint was filed by § 87(2)(b) on behalf of § 87(2)(b) via telephone with the CCRB.

On February 2, 2017, at approximately 9:43 p.m., § 87(2)(b) was inside his friend's apartment (whose name § 87(2)(b) provided only as § 87(2)(b) and whom the investigation was unable to identify) located on the § 87(2)(b) within the New York City Housing Authority Wagner Houses in Manhattan. Earlier that evening, § 87(2)(b) had dinner with his girlfriend, § 87(2)(b). During this dinner, § 87(2)(b) consumed approximately three margaritas filled with tequila and mango liqueur within the span of an hour. Immediately after this dinner, § 87(2)(b) travelled to § 87(2)(b) to meet with § 87(2)(b).

While inside of § 87(2)(b) apartment, § 87(2)(b) shared a "blunt" with § 87(2)(b) § 87(2)(b) stated this blunt contained approximately one gram of marijuana wrapped inside of cigar paper. While smoking, § 87(2)(b) and § 87(2)(b) also drank three shots of Hennessy. Approximately 15 minutes later, § 87(2)(b) grandmother told both § 87(2)(b) and § 87(2)(b) they were not allowed to smoke inside of the apartment and asked them to leave. § 87(2)(b) and § 87(2)(b) then left the apartment to visit a friend who lived on another floor within the building. § 87(2)(b) was dressed in a red Tommy Hilfiger jacket, a black hoodie, a white t-shirt, blue jeans, and green Adidas sneakers. § 87(2)(b) wore a "skully" hat, a black jacket, dark colored jeans and boots.

Once outside the apartment, § 87(2)(b) and § 87(2)(b) walked down the hallway towards the elevator bank. At that time, two female individuals were also waiting by the elevators. § 87(2)(b) and § 87(2)(b) waited along with them. While waiting for an elevator to arrive, PO Sajit Tomy and PO Thomas Tunstall of Housing Bureau Manhattan Response Team entered into the hallway via a stairwell located between § 87(2)(b) apartment and the elevator bank. At that moment, an elevator arrived and the two female individuals entered into it, and left the floor. Before § 87(2)(b) and § 87(2)(b) entered into the elevator, the officers told § 87(2)(b) and § 87(2)(b) "Don't move." § 87(2)(b) and § 87(2)(b) complied and did not enter into the elevator (**Allegation A, B, C, and D**).

PO Tomy asked § 87(2)(b) what he was doing in the building. § 87(2)(b) replied by asking PO Tomy if he was being detained. PO Tomy or PO Tunstall did not respond and § 87(2)(b) began walking towards the stairwell door the officers had just entered into the hallway. PO Tomy then placed his arm against the wall, blocking § 87(2)(b) from walking away (**Allegation D cont.**).

§ 87(2)(b) stood approximately two or three feet from the stairwell door, and again asked PO Tomy why he was not free to leave. The officers allegedly replied that they were looking for firearms. § 87(2)(b) told the officers that neither he nor § 87(2)(b) had any firearms on their persons. § 87(2)(b) and § 87(2)(b) then raised their shirts over their heads, exposing their waistbands, to demonstrate they had no weapons. § 87(2)(b) then pulled out from his jacket pocket "two or three plastic bags of weed" and displayed these bags to the officers. PO Tomy told § 87(2)(b) to put it away because they were not interested in any drugs. The officers then asked § 87(2)(b) and § 87(2)(b) for identification. § 87(2)(b) provided his identification and told the

officers he was a resident within the building. The officers looked over § 87(2)(b) identification, returned it, and told him to leave the area. § 87(2)(b) then returned to his apartment.

After § 87(2)(b) left, § 87(2)(b) explained that he had no identification on his person but used his cell phone to provide the officers with his “Instagram” and “Facebook” pages which displayed his first and last name. PO Tunstall then used an NYPD issued cell phone to run the information § 87(2)(b) provided for outstanding warrants.

Approximately one minute later, PO Tunstall showed § 87(2)(b) a photograph of his parole card using his NYPD cell phone and asked § 87(2)(b) if he was a parolee. § 87(2)(b) replied that he was. At this time, § 87(2)(b) believed he had provided sufficient information to the officers to determine his identity and was no longer being detained. § 87(2)(b) then walked towards the stairwell door and pushed open the door. § 87(2)(b) stated he overheard either PO Tomy or PO Tunstall remark, “We’re going to fuck you up” while attempting to leave the § 87(2)(b) floor (**Allegation E**). PO Tomy then immediately grabbed § 87(2)(b) by his hoodies, pushed § 87(2)(b) through the stairwell door, and slammed him against an interior wall within the stairwell (**Allegation F**). PO Tunstall then entered into the stairwell and grabbed PO Tomy which caused PO Tomy and § 87(2)(b) to lose their footing and fall down a flight of stairs to the seventh floor.

PO Tomy landed on § 87(2)(b) who was lying down on his stomach. PO Tomy had his knees pressed in the middle of § 87(2)(b) back. PO Tunstall ran down the stairs and grabbed a hold of § 87(2)(b) right ankle, and twisted it, causing § 87(2)(b) to kick out with his right leg (**Allegation G**). This kick connected with PO Tomy which caused him to fall from the seventh to sixth floor landing. § 87(2)(b) and the officers continued to struggle from the sixth floor landing to the fourth floor landing but § 87(2)(b) did not remember any actions he took or those of the officers during that time.

When the officers and § 87(2)(b) reached the fourth floor landing, § 87(2)(b) hoodie and jacket had been pulled over his head, which limited his ability to see what was going on. § 87(2)(b) made several attempts to pull his hoodie and jacket down over his body. § 87(2)(b) managed to free his head, which allowed him to see PO Tunstall in front of him. However, his arms remained stuck inside the sleeves of both his hoodie and jacket, which prevented him from moving his arms. At that time, PO Tunstall began punching § 87(2)(b) in his face, which § 87(2)(b) estimated to be three to four punches to his right eye (**Allegation G cont.**). PO Tunstall’s punches caused him to become dizzy and fall backwards down from the fourth floor landing to the third floor landing. As § 87(2)(b) fell from the fourth to third floor landings, he rolled down the stairs, and continued to roll from the third floor landing to the first floor landing.

Upon reaching the first floor landing, § 87(2)(b) curled up into a fetal position and placed his hands behind his back. At that time, PO Michael of Fasano and Sergeant Natasha Friday of Housing Bureau Manhattan Response Team rushed into the stairwell. PO Fasano grabbed § 87(2)(b) hands and handcuffed him. After being handcuffed, more officers arrived and entered into the stairwell. PO Fasano and several other officers allegedly took turns kicking § 87(2)(b) with their heels (**Allegation H and I**). § 87(2)(b) alleged he was kicked more than ten times on the left side of his face and ribs. The alleged heel kicking lasted approximately one minute

before PO Fasano and three other officers grabbed § 87(2)(b) by his arms and legs and carried him outside of § 87(2)(b)

Once outside, officers carried § 87(2)(b) to a marked police sedan where they allegedly hit his head once between the front passenger side and back passenger side door. The officers then carried § 87(2)(b) to a marked police van. § 87(2)(b) stated that the door to the van was open and that PO Fasano and the officers allegedly used § 87(2)(b) head to close it (**Allegation J and K**). § 87(2)(b) then allegedly heard an officer state, “I don’t give a fuck, let’s take him,” and carried § 87(2)(b) to the PSA5 stationhouse (**Allegation L**). § 87(2)(b) did not know how far or how long he was carried before arriving to the PSA5 stationhouse, nor did he remember how many officers carried him there.

§ 87(2)(b) was brought to the PSA5 stationhouse where he was placed inside of the prisoner holding pen. While inside the pen, § 87(2)(b) vomited and requested medical attention. Approximately one minute later, officers entered into § 87(2)(b) cell, saw § 87(2)(b) throwing up, and called an ambulance. Approximately five or ten minutes later, EMT’s arrived and examined § 87(2)(b). The EMT’s then transported § 87(2)(b) to § 87(2)(b)

At the hospital, § 87(2)(b) complained of bruises on his back, face, a strained neck, an inability to use his legs, memory loss, and issues with his bowel movements. § 87(2)(b) did not know how long he was kept at § 87(2)(b) but he was later brought back to PSA5 stationhouse where his arrest was processed. Approximately six or seven hours later, § 87(2)(b) was transported from the PSA5 stationhouse to Manhattan Detention Center to await his arraignment. § 87(2)(b) had no further interaction with the officers from the incident (**Board Review 01**).

As a result of this incident, § 87(2)(b) was charged with § 87(2)(b)

§ 87(2)(b)

The investigation obtained video footage from the PSA5 VIPER Unit surveillance system within § 87(2)(b) that captures, in part, the incident. This footage can be reviewed below:



2017-03-30_16-43-34 (VIPER - Inside Stairwell B).mp4

This first clip can be viewed in IA89 using the VLC Media Player and is 1:58 minutes in length. The video footage was recorded by a NYCHA Wagner Houses VIPER Unit surveillance camera positioned between the second floor and first floor landing of Stairwell § 87(2)(b) inside of § 87(2)(b)

In this clip, PO Tomy, PO Tunstall, and § 87(2)(b) are seen falling down from the third floor landing to the second floor landing. The officers can be seen alternatively grabbing and punching § 87(2)(b). § 87(2)(b) is shown shoving the officers and then pulling them down the flight

of stairs to the first floor landing. Once on the first floor landing, the officers continue to struggle with § 87(2)(b) before all three disappear from this camera's view (**Board Review 02**).



2017-03-30_16-36-01 (VIPER - Stairwell B Exit).mp4

This second clip can be viewed in IA90 using the VLC Media Player and is 4:34 minutes in length. The video footage was recorded by a NYCHA Wagner Houses VIPER Unit surveillance camera positioned outside of the exit door for Stairwell B inside of § 87(2)(b).

In this clip, one white male officer and one black female officer (identified via the investigation as PO Fasano and Sgt. Friday) can be seen running into Stairwell B to assist PO Tomy and PO Tunstall. Several seconds later, multiple officers appear and also enter into the stairwell. PO Tomy is seen exiting from the stairwell clutching his left shoulder and PO Tunstall exits from the stairwell with the assistance of several officers. Both officers are then escorted outside. Approximately two minutes later, § 87(2)(b) is seen being removed from the stairwell by PO Fasano and three other unidentified plainclothes officers. This video does not show any officer using force against § 87(2)(b) (**Board Review 03**).

§ 87(2)(g)

Mediation, Civil and Criminal Histories

- This case was not suitable for mediation due to § 87(2)(b) arrest.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- On July 10, 2017, a request was sent to the New York City Comptroller's Office in regards to any Notice of Claim that may have been filed in regards to this complaint. It will be added to the case file upon receipt (**Board Review 05**).

Civilian and Officer CCRB Histories

- This is § 87(2)(b) s and § 87(2)(b) first CCRB complaint (**Board Review 06**).
- PO Tomy has been a member of service for three years and this is his third CCRB complaint. In case number 201600151, eight allegations of force (gun pointed, gun as club, pepper spray, and physical force), one discourtesy allegation (word) and one abuse of authority allegation (stop of person) were pleaded against him. Three force allegations (gun pointed and gun used as club), and one abuse of authority allegation (stop of person) were closed as substantiated with a recommendation of Command B Discipline. The NYPD has not yet imposed a penalty for these allegations. The remaining allegations

were closed as exonerated or victim uncooperative. In case number 201601113, five abuse of authority allegations (question, stop of person, frisk, and search of person) were pleaded against him. Two abuse of authority allegations (question and stop of person) were closed as substantiated with a recommendation of Command A Discipline. The NYPD has not yet imposed a penalty for these allegations. The remaining allegations were closed as unsubstantiated (**Board Review 07**).

- PO Tunstall has been a member of service for three years and this is his first CCRB complaint (**Encl. Board Review 07**).
- PO Michael Fasano has been a member of service for three years and this is his first CCRB complaint (**Encl. Board Review 07**).

Potential Issues

- § 87(2)(b) did not provide any contact information for the male individual whose name he provided as “§ 87(2)(b)” and a UF-250 was not prepared regarding the stop of § 87(2)(b). Without additional information, the investigation was unable to conduct searches to contact § 87(2)(b) in regard to this incident. As such, the investigation was unable to obtain either a phone statement or sworn statement from him. (**Encl. Board Review 01**).

Findings and Recommendations

Explanation of Subject Officer Identification

During his CCRB interview, PO Tomy stated that upon entering onto the § floor and observing two male individuals, the individual known as, “§ 87(2)(b)” approached him directly and provided his identification voluntarily. After reviewing § 87(2)(b) identification, PO Tomy determined that § 87(2)(b) lived in the building and released him. During his CCRB interview, PO Tunstall never makes mention of § 87(2)(b) and stated that § 87(2)(b) was alone during this incident. § 87(2)(g)

§ 87(2)(b) alleged he overheard either PO Tomy or PO Tunstall remark, “We’re going to fuck you up” while attempting to leave the 8th floor while being detained by officers. § 87(2)(g)

§ 87(2)(b) was unable to describe any of the officers whom he alleged kicked him, hit his head against a police vehicle, made a discourteous remark about him, or any of the officers who transported him to the PSA5 stationhouse. § 87(2)(g)

§ 87(2)(g)

However, during the course of interviewing said officers, the investigation identified the officer who handcuffed § 87(2)(b) as PO Michael Fasano. During his CCRB interview, PO Fasano acknowledged being on scene during this incident and that he had handcuffed § 87(2)(b). Furthermore, PO Fasano stated he, along with three male plainclothes officers (whom PO Fasano stated he did not know and the investigation was unable to identify), transported § 87(2)(b).

from § 87(2)(b) to the PSA5 stationhouse. § 87(2)(g)

Allegations not pleaded

During the above mentioned interaction (see Explanation of Subject Officer Identification section), PO Tomy stated that § 87(2)(b) identification did in fact confirm him as a resident within § 87(2)(b) but listed his apartment being on the § floor. This prompted PO Tomy to ask § 87(2)(b) why he was on the § floor. § 87(2)(b) replied that it was none of PO Tomy's business. PO Tomy then asked § 87(2)(b) if he could frisk him, and § 87(2)(b) allegedly assented to this frisk. After the frisk was conducted, PO Tomy released § 87(2)(b) who then exited from the § floor via the stairwell the officers had initially entered from. § 87(2)(b) never saw this interaction and the investigation was unable to obtain a sworn statement from § 87(2)(b) § 87(2)(g)

Encl. Board Review 08).

§ 87(2)(g)

Allegation A – Abuse of Authority: Police Officer Sajit Tomy stopped an individual.

Allegation B – Abuse of Authority: Police Officer Thomas Tunstall stopped an individual.

Allegation C – Abuse of Authority: Police Officer Sajit Tomy stopped § 87(2)(b)

Allegation D – Abuse of Authority: Police Officer Thomas Tunstall stopped § 87(2)(b)

After exiting from § 87(2)(b) apartment, § 87(2)(b) and § 87(2)(b) walked towards the eighth floor elevator bank to travel to another floor and enter into another apartment. While standing in front of the elevator bank, PO Tomy and PO Tunstall exited from a stairwell and observed § 87(2)(b) and § 87(2)(b) standing there. The officers issued a command for § 87(2)(b) and § 87(2)(b) to remain where they were.

During their CCRB interview, PO Tomy and PO Tunstall stated that prior to this incident; they had been conducting a vertical patrol of the building stairwells and hallways. § 87(2)(e), § 87(2)(f)

§ 87(2)(b) The officers then exited the elevator in the lobby and rode another elevator back to the § 87(2)(b) floor where they entered a stairwell and walked up to the § 87(2)(b) floor (**Board Review 08 and 10**).

§ 87(2)(g)

Allegation F – Force: Police Officer Sajit Tomy used physical force against § 87(2)(b)

Allegation G – Force: Police Officer Thomas Tunstall used physical force against § 87(2)(b)

After § 87(2)(b) confirmed that he was a parolee upon being questioned by PO Tunstall, § 87(2)(b) believed he was free to go and attempted to exit from the § floor via a stairwell. Upon opening the door to this stairwell, PO Tomy grabbed § 87(2)(b) and slammed him against an interior wall inside the stairwell. § 87(2)(b) attempted to free himself from PO Tomy's grip when PO Tunstall grabbed a hold of PO Tomy. This action caused all involved to fall down one flight of stairs from the § floor to the § floor. The ensuing struggle to overcome § 87(2)(b) resistance towards apprehension resulted in injuries to PO Tomy, PO Tunstall, and § 87(2)(b).

The Line of Duty Injury Reports prepared for PO Tomy indicated he was diagnosed with a dislocation of the left shoulder joint, while PO Tunstall was diagnosed with pain to his right knee with lacerations across his hands and face (**Board Review 13**).

NYPD Patrol Guide Procedure 221-01 (1) states members of service will take necessary action to protect life and personal safety of all persons present, including the subjects being placed into custody. (2) Utilize de-escalation techniques when appropriate and consistent with personal safety, which may reduce or eliminate the need for force, and increase the likelihood of the subject's voluntary compliance. (5) Request additional members, as necessary, to control situation. Furthermore, the reasonableness of the use of force is based upon the totality of the circumstances known by the MOS at the time of the use of force. The Department examines the reasonableness of force view from the perspective of a member with similar training and experience placed into the same circumstances as the incident under investigation (**Encl. Board Review 12**).

During their CCRB interviews, both PO Tomy and PO Tunstall were consistent in their testimonies on § 87(2)(b) actions once he attempted to leave the § floor. Both officers issued several commands to § 87(2)(b) to not flee and to stop resisting arrest, commands that § 87(2)(b) ignored. The officers acknowledged using hand strikes and grappling techniques to attempt to subdue § 87(2)(b) all of which was ineffective.



2017-03-30_16-43-34 (VIPER - Inside Stairwell B).mp4

Video footage taken from the VIPER surveillance camera positioned within the stairwell captures much of the force used against § 87(2)(b) (**Encl. Board Review 02**).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation H – Force: Police Officer Michael Fasano used physical force against § 87(2)(b)

Allegation I – Force: Officers used physical force against § 87(2)(b)

Allegation J – Force: Police Officer Michael Fasano hit § 87(2)(b) **against a vehicle.**

Allegation K – Force: Officers hit § 87(2)(b) **against a vehicle.**

Allegation L – Discourtesy: An officer spoke discourteously to § 87(2)(b)

Upon reaching the first floor landing, § 87(2)(b) curled up into a fetal position and placed his hands behind his back. At this time, several officers responded to the scene. While lying in this position, § 87(2)(b) was handcuffed, and officers, whom he could not see or describe, allegedly took turns heel kicking him as he lay prostrate on the ground. Approximately one minute later, § 87(2)(b) was lifted up by his arms and legs by multiple officers and transported to the PSA5 stationhouse. While being transported to the stationhouse, § 87(2)(b) alleged that the officers escorting him hit his head against one police vehicle and used his head to close the door of another. At that time, § 87(2)(b) allegedly heard an officer state, “I don’t give a fuck, let’s take him,” in reference to carrying him to the PSA5 stationhouse.

During his CCRB interview, PO Fasano acknowledged that both he and Sgt. Friday responded to the radio run put out by PO Tomy. PO Fasano remembered being the first officers to arrive on scene. PO Fasano stated upon entering into the location, he encountered PO Tomy and PO Tunstall lying on top of § 87(2)(b) within the stairwell. PO Fasano and Sgt. Friday entered into the stairwell and instructed PO Tomy and PO Tunstall to leave the stairwell. PO Fasano then handcuffed § 87(2)(b) who was lying prostrate on the floor within the stairwell. At that time, several more officers arrived on scene. PO Fasano stated that he along with three male plainclothes officers (whom PO Fasano stated he did not know and the investigation was unable to identify), transported § 87(2)(b) from § 87(2)(b) to the PSA5 stationhouse.

PO Fasano denied kicking § 87(2)(b) inside of the stairwell exit or seeing any other officers do so. PO Fasano stated that upon arriving at the incident location, § 87(2)(b) was exhausted, and only momentarily resisted placing his arms by keeping his hands tucked under his stomach before placing his hands behind his back to be handcuffed. PO Fasano denied that while transporting § 87(2)(b) to the PSA5 stationhouse, he used § 87(2)(b) head to close a police vehicle door. PO Fasano denied seeing another officer take this action. PO Fasano denied directing any

profanities towards § 87(2)(b) during this incident. PO Fasano denied hearing any other officer's direct profanities towards § 87(2)(b) (**Encl. Board Review 09**). During her CCRB interview, Sgt. Friday denied ever seeing force used against § 87(2)(b) or hearing § 87(2)(b) complain about officers kicking him or directing profanities at him after he had been placed in handcuffs by PO Fasano (**Board Review 14**).



2017-03-30_16-36-01 (VIPER - Stairwell B Exit).mp4

Video footage taken from the VIPER surveillance camera positioned outside the stairwell depicts multiple officers entering into the location, however, the view of the interactions within the stairwell are obscured by its door and officers entering into and out from the stairwell (**Encl. Board Review 03**).

§ 87(2)(g)
[Redacted text block containing five lines of blacked-out information]

Squad: **9**

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date